



DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910, 1915, 1917, 1918, 1926, and 1928

[Docket No. OSHA–2021–007]

COVID-19 Vaccination and Testing; Emergency Temporary Standard; Ratification of Department’s Actions

AGENCY: Occupational Safety and Health Administration, Department of Labor (DOL)

ACTION: Ratification

SUMMARY: The Department of Labor is publishing notification of the Secretary of Labor’s ratification of a rule.

DATES: The ratification was signed on November 12, 2021.

FOR FURTHER INFORMATION CONTACT: *General information and press inquiries:*

Contact Frank Meilinger, OSHA Office of Communications, U.S. Department of Labor; telephone (202) 693-1999; email: OSHAComms@dol.gov.

For technical inquiries: Contact Andrew Levinson, OSHA Directorate of Standards and Guidance, U.S. Department of Labor; telephone (202) 693-1950; email: ETS@dol.gov.

SUPPLEMENTARY INFORMATION: On November 12, 2021, the Secretary of Labor ratified an interim final rule codifying an emergency temporary standard to protect unvaccinated employees of large employers from the risk of contracting COVID-19. *See* Interim Final Rule, COVID-19 Vaccination and Testing; Emergency Temporary Standard, 86 FR 61402 (November 5, 2021) (the “Interim Final Rule”). The Department is now publishing the ratification in the

Federal Register out of an abundance of caution. Neither the ratification nor the publication is a statement that the ratified action would be invalid absent the ratification, whether published or otherwise.

APPENDIX

RATIFICATION

By virtue of the authority vested in the Secretary of Labor by law, including 33 U.S.C. 941 and 29 U.S.C. 653, 655, 657, I am affirming and ratifying a prior action by Acting Assistant Secretary James S. Frederick. On November 5, 2021, the Occupational Safety and Health Administration published in the Federal Register an interim final rule codifying an emergency temporary standard to protect unvaccinated employees of large employers from the risk of contracting COVID-19. *See* Interim Final Rule, COVID-19 Vaccination and Testing; Emergency Temporary Standard, 86 FR 61402 (November 5, 2021) (the “Interim Final Rule”).

The Interim Final Rule was signed by James S. Frederick, Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health, who was serving as Acting Assistant Secretary of Labor for Occupational Safety and Health before the current Assistant Secretary of Labor for Occupational Safety and Health assumed office. Questions have been raised in litigation, however, concerning Mr. Frederick’s authority to sign the interim final rule.

Out of an abundance of caution, to avoid any doubt as to its validity, I have independently evaluated the Interim Final Rule and the basis for adopting it. I now affirm and ratify the Interim Final Rule, without deference to Mr. Frederick’s prior decision. In my considered and independent judgment, the Interim Final Rule was and remains necessary to protect unvaccinated employees against the grave danger of exposure to the virus that causes COVID-19.

I have full and complete knowledge of the Interim Final Rule action taken by former Acting Assistant Secretary Frederick. I have also determined that the assessment of grave danger in the Interim Final Rule and the Rule's assessment of how best to respond to that danger remain valid based on my assessment of the situation at the time of this ratification. Pursuant to my authority as the Secretary of Labor, and based on my independent review of the action and the reasons for taking it, I hereby affirm and ratify the Interim Final Rule, as of October 26, 2021.

Martin J. Walsh
Secretary of Labor

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